

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VANCE MARCEL GIBSON,)	
)	
Petitioner,)	
)	1:18CV22
v.)	6:93CR211-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner facing the revocation of his supervised release, submitted a Motion [Doc. #321] in which he seeks to attack the original conviction and sentence he received in this Court. The document he filed is not a recognizable method for achieving this goal. Instead, the proper avenue for such an attack is ordinarily a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The judge presiding over Petitioner's revocation hearing ordered that Petitioner's submission be treated as such a motion and referred to the undersigned for screening. Upon screening review, the Motion cannot be further processed because court records reveal that Petitioner previously attacked the same conviction and sentence in a prior § 2255 motion. Consequently, Petitioner must move in the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Motion, as required by 28 U.S.C. § 2255 and 28

U.S.C. § 2244. See AO 243 (MDNC 10/07), Instructions, ¶ (4) (copy enclosed). Because of this pleading failure, this particular Motion should be filed and then dismissed.¹

IT IS THEREFORE RECOMMENDED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the Court of Appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 30th day of April, 2018.

/s/ Joi Elizabeth Peake
United States Magistrate Judge

¹ The Court notes that Petitioner filed a subsequent § 2255 Motion [Doc. #334] on March 29, 2018, on the proper forms challenging the Supervised Release Revocation Sentence. The Court will consider that Motion separately. The present Recommendation relates only to the § 2255 Motion filed in January 2018 challenging the original 1994 conviction and sentence in this case.